

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK ROGOWSKI and NANCY ROGOWSKI,

08 Civ. 0517

Plaintiffs,

-against-

VERIFIED ANSWER

JEFFREY FEAGLES, MICHAEL SWEETON,
THOMAS SHUBACK, TSKS, LLC and THE TOWN
OF WARWICK,

Defendants.
-----X

Defendant named herein as **JEFFREY FEAGLES, MICHAEL SWEETON and THE TOWN OF WARWICK**, by its attorneys, **HODGES, WALSH & SLATER, LLP**, as and for an Answer to plaintiffs' Complaint dated January 16, 2008, allege upon information and belief as follows:

THE PARTIES

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "4" and "5" of the Plaintiff's Complaint.

SECOND: Admits in Paragraph "2" Defendant Jeffrey Feagles ("Feagles") was and is the Commissioner of the Department of Public Works of the Town of Warwick but refers all questions of law to this Court.

THIRD: Admits in Paragraph "3" Defendant Michael Sweeton ("Sweeton") was and is the duly selected Supervisor of the Town of Warwick but refers all questions of law to this Court.

NATURE OF ACTION AND JURISDICTION

FOURTH: Denies each and every allegation contained in paragraphs "7", "8", "9" and "10" of the Plaintiff's Complaint.

FIFTH: Denies each and every allegation contained in paragraphs "11" of the Plaintiff's Complaint and refers all questions of law to this Court.

PLAINTIFF'S STATEMENT OF CLAIMS

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "12" of the Plaintiff's Complaint but admits dirt from Plaintiffs' property travelled onto Mt. Eve Road.

SEVENTH: Denies each and every allegation contained in paragraphs "13", "14", "15", "16", "17", "20", "21", "22", "23", "24", "25" and "26" of the Plaintiff's Complaint.

EIGHTH: Denies each and every allegation contained in paragraphs "18" of the Plaintiff's Complaint and refers all questions of law to this Court.

NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "19" of the Plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

TENTH: The plaintiff's complaint fails to state a cause of action and/or claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

ELEVENTH: The plaintiff's claims do not rise to the level of a constitutional violation as against these defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWELFTH: The plaintiff's speech was not a matter of public concern.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTEENTH: The plaintiff does not have a federally protected property interest in the soil, dirt and/or debris at issue.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

FOURTEENTH: The plaintiff's state claims are barred by their failure to comply with the applicable provisions of the General Municipal Law of the State of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

FIFTEENTH: The defendants Jeffrey Feagles and Michael Sweeton are entitled to qualified immunity.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

SIXTEENTH: The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

SEVENTEENTH: The defendants acted in good faith and without malice.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

EIGHTEENTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

NINETEENTH: The plaintiff's damages, if any, were caused and created, in whole or in part, by the plaintiff's failure to take steps to mitigate such damages.

Dated: White Plains, NY
February 14, 2008

Yours, etc.



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HODGES, WALSH & SLATER, LLP
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TO: **ROBERT N. ISSEKS, ESQ. (RI 0241)**
Attorneys for Plaintiffs
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Middletown, New York 10940

VERIFICATION

STATE OF NEW YORK)
 SS.:
COUNTY OF WESTCHESTER)

I, THE UNDERSIGNED, AM AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF THE STATE OF NEW YORK, AND SAY THAT: I AM THE ATTORNEY OF RECORD, OR OF COUNSEL WITH THE ATTORNEY OF RECORD, FOR THE DEFENDANTS, JEFFREY FEAGLES, MICHAEL SWEETON and THE TOWN OF WARWICK. I HAVE READ THE ANNEXED **VERIFIED ANSWER**, KNOW THE CONTENTS THEREOF, AND THAT SAME ARE TRUE TO MY OWN KNOWLEDGE, EXCEPT THOSE MATTERS THEREIN WHICH ARE STATED TO BE ALLEGED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS THEREIN NOT STATED UPON KNOWLEDGE, IS BASED UPON THE FOLLOWING: MATERIAL IN THE FILE, INFORMATION AND DOCUMENTS CONTAINED IN SAID FILE.

Dated: White Plains, New York
February 14, 2008



PAUL E. SVENSSON